

STATE OF CALIFORNIA
Energy Resources Conservation and Development Commission

In the Matter of:

APPLICATION FOR CERTIFICATION FOR THE
HIDDEN HILLS SOLAR ELECTRIC
GENERATING SYSTEM

Docket No. 11-AFC-02

California Energy Commission

DOCKETED

11-AFC-2

TN # 69360

FEB 04 2013

**INTERVENOR CINDY MACDONALD'S
RESPONSE TO
ENERGY COMMISSION STAFF MOTION FOR SUBPOENA DUCES TECUM
AND
MOTION FOR EXTENSION OF TIME FOR REBUTTAL TESTIMONY
OR, IN THE ALTERNATIVE,
MOTION TO STRIKE TESTIMONY**

**OBJECTION
TO ALTERNATIVE MOTION TO STRIKE TESTIMONY**

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I. STATEMENT OF FACTS

On February 1, 2013, the Energy Commission Staff filed a “Motion for Subpoena Duces Tecum and Motion for Extension of Time For Rebuttal Testimony Or, In The Alternative, Motion To Strike Testimony” herein referred to as the “Motion”. The background for the Motion, scope, necessity, reasons, and conclusions Staff has presented can be reviewed in the Motion itself.

II. ARGUMENTS TO INCLUDE TESTIMONY REGARDING SEDC FLUX STUDY INTO THE EVIDENTIARY RECORD

A. Informed Decision Making Requires Consideration of Data Adequacy

While it is certainly understandable that Staff seeks to subpoena and require further information for the reasons outlined in the Motion, it is imperative that the evidentiary record contain all relevant facts pertaining to the SEDC Flux Study as these facts clearly show both Applicant’s actions and attitudes throughout these proceedings, which include failures to satisfy requirements to reasonably supply available data and information during the HHSEGS AFC proceedings.

If we are to use the standard of insufficient information, insufficient proof, limited and/or inadequate data as reason to prevent these facts from being considered, then no informed decision making is possible if all questions, doubts and proofs of these facts are allowed to be stricken from the record prior to being presented for consideration.

If this same standard were applied to all my unanswered or partially answered questions, vast portions of my testimony regarding the proposed HHSEGS project could be “stricken from the record” as well.

B. Applicant Should Not Be Absolved of “Bearing The Burden Of Proof”

The AFC proceedings and evidentiary hearings require the Applicant to “bear the burden of proof” and the Motion clearly outlines how Applicant has been both remiss and perhaps even negligent in their duties to exercise due diligence by providing that proof, despite repeated efforts by Staff and other parties to obtain what should be information and data that is reasonably available to the Applicant regarding the SEDC Flux Study.

The Motion’s Alternative Motion to strike these facts from the evidentiary record would allow critical and key components that have occurred during the HHSEGS AFC proceedings to “vanish” from consideration and relieve the Applicant of having to supply the burden of proof through their testimony. As such, critical components necessary in evaluating the project’s potential impacts, including the highly experimental nature of these unproven utility scale facilities, would remain unreported and stricken from the decision makers considerations.

While it is certainly understandable that Staff would like to have additional information prior to presenting their rebuttal testimony, if Applicant is unwilling or incapable of providing proof to support their testimony, then this fact must not be stricken from the record.

To the contrary, it is CEC Staff’s obligation to provide evidence that the SEDC Flux Study is not credible as currently submitted and that Applicant has consistently evaded requests and significant efforts by Staff to obtain said information. As such, evidence supports the fact that Applicant has demonstrated a decided failure to reasonably exercise due diligence in these proceedings and Staff should be prepared to testify to this fact, not have it stricken from the record in order to save “time” at the evidentiary hearings.

Furthermore, by granting the Motion’s request to strike the SEDC Flux Study and all associated information from further consideration, such an order could be considered akin to inadvertently

“rigging” the evidentiary hearing in favor of the Applicant because it would absolve Applicant from the requirement to bear the burden of proof regarding their testimony.

If Staff believes the Applicant’s testimony contains critical omissions, non-disclosures, inaccurate assumptions, misrepresentations, etc. and therefore, should not be considered by the Committee as credible, then Applicant bears the burden to prove otherwise.

As such, the Committee should not allow the SEDC Flux Study, or the facts that surround it, to be removed from consideration or the public record during the evidentiary hearings.

C. The SEDC Flux Study And Associated Data Is Germane To My Testimony

On January 31, 2013, I mailed my testimony to the CEC regarding the proposed HHSEGS, which incorporated critical data, information and facts stated by the Applicant, Mr. Santolo and/or their representatives regarding the SEDC Flux Study and associated information that is germane to my testimony. I believe this information is critical for consideration and informed decision making regarding the proposed HHSEGS. To strike these critical components from the public record, and consequently my testimony, would be injurious to my case and its supporting facts.

For example, during the August 28, 2012 joint Hidden Hills and Rio Mesa SEGS workshop, many questions were asked of Mr. Santolo with respect to the effects of solar flux on birds used to conduct the SEDC Flux Study. Here, Mr. Santolo stated:⁽¹⁾

“As I understand it, solar flux, the efficiency of the energy, isn’t very efficient for heating water molecules.”

“What this tells me is this is not a very efficient way to heat something”.

Given the fact that the entire proposed HHSEGS project is centered around the generation of electrical power through flux produced from the heliostat fields, Mr. Santolo’s statement

Opening Testimony of Intervenor C.R. MacDonald, Power Plant Efficiency, 3. Sunlight Efficiency in Power Production, p. 4-6, 4-7.

regarding mirror flux's lack of efficiency to "heat something up" is central for incorporation and consideration regarding the actual efficiency, or lack thereof, of the proposed HHSEGS systems and designs.

While this is not the only area I have incorporated information in my testimony garnered from the SEDC Flux Study and associated workshops, it is included here to show relevance of the information and as such, why it is critical that the Committee not allow it to be stricken from the record or from consideration during the evidentiary hearings.

Furthermore, the SEDC Flux Study and most especially, the events that have surrounded efforts to obtain additional information regarding the study, are supportive of arguments made in the "Motion To Terminate the Application For Certification of the Hidden Hills Solar Electric Generating System" (TN#68693) filed with the Commission on November 20, 2012, that allege in part that, Applicant has not accurately or truthfully informed the Commission, Staff and interested parties of materially relevant facts, has falsified material facts, misrepresented material facts, omitted key material facts, and has failed to disclose potential risks, possible public safety hazards, and reliability and equipment issues associated with the proposed project's design.

The Motion is also supportive of arguments presented to the Committee in my "Objection To Order Denying Motion To Terminate Application For Certification of the Hidden Hills SEGS (TN#68789) filed with the Commission on December 6, 2012. This "Objection" included facts to support the Applicant's consistent and demonstrable failure to exercise due diligence in the AFC proceedings and objected to the appropriateness of the Order to allow the Applicant to present testimony and testify under oath without resolving these issues prior to the evidentiary hearings. Therefore, it is not surprising to find these issues or similar issues continuing to be of concern in the HHSEGS AFC proceedings.

According to the Committee's Order denying the Motion to Terminate the HHSEGS AFC, the Committed stated it, "[*The Committee*] must defer consideration of questions of facts until they can be tested openly and fairly in an evidentiary hearing." (See Order Re: Intervenor, Cindy R. MacDonald's Motion To Terminate Application For Certification for the Hidden Hills Solar Electric Generating System", TN#68707, issued November 29, 2012.)

If the Committee grants the Motion's Alternative Motion to strike the SEDC Flux Study and the events that surrounded Staff's compulsion to issue the Motion, then the Committee will in effect, prevent these same consideration of facts from being tested openly and fairly.

Therefore, while I have no objections to the majority of the Motion's requests, I strongly object to Staff's proposed Alternative Motion to strike the SEDC Flux Study and relevant associated information from consideration during the evidentiary hearings.

III. Prayer For Relief

While I can foresee no harm from the Committee granting every request in the Motion to assist Staff and other interested parties in obtaining long sought after information prior to the evidentiary hearings and allowing additional time to file Rebuttal Testimony concerning the specific issues raised, especially considering it is the Applicant's failure to exercise due diligence that has resulted in additional burdens being place on Staff and others involved in these proceedings, I must strongly object to the Motion's Alternative Motion to have these same facts, the SEDC Flux Study and all its associated information to be stricken from the record at the evidentiary hearings.

If the Committee grants the Motions' request via the Alternative Motion to strike these facts from the record prior to the evidentiary hearings, it will not only be injurious to my testimony, it

will also be contrary to the positions stated by the Committee when they deferred and denied the “Motion To Terminate the Application For Certification of the HHSEGS”.

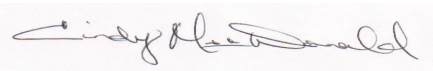
Furthermore, granting the Motion’s Alternative Motion will prevent informed decision making by striking from consideration what Staff believes is “inadequate data” that must be considered by the Committee as equally important in the decision making process as “adequate data”.

Finally, it will as inadvertently absolve the Applicant of having to meet the substantive requirements of CEQA in the AFC proceedings, which include Applicant’s duty to bear the burden of proof in their testimony.

As such, I respectfully request the Committee grant the requested actions contained in the Motion with the singular exception of granting the Motion’s Alternative Motion to strike testimony concerning the SEDC Flux Study and associated information from the evidentiary hearings and strongly urge the Committee to DENY the Motions Alternative Motion for the reasons outlined herein.

Dated: February 3, 2013

Respectfully submitted by,

A handwritten signature in black ink, appearing to read "Cindy R. MacDonald", is written on a light pink rectangular background.

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HIDDEN HILLS SOLAR ELECTRIC
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Docket No. 11-AFC-02

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(Revised 9/20/12)**

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DECLARATION OF SERVICE

I, Cindy R. MacDonald, declare that on February 3, 2012, I served and filed copies of the attached Response and Objection to CEC Staff Subpoena Duces Tecum, Motion for Extension of Time, Alternative Motion To Strike Testimony, dated February 3, 2013. This document is accompanied by the most recent Proof of Service list, located on the web page for this project at: www.energy.ca.gov/sitingcases/hiddenhills/index.html.

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit or Chief Counsel, as appropriate, in the following manner:

(Check all that Apply)

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- ☒ Served electronically to all e-mail addresses on the Proof of Service list;
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- ☒ by sending an electronic copy to the e-mail address below (preferred method); **OR**
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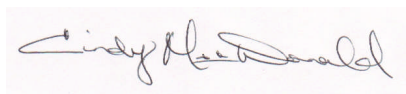
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OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:

- ☐ Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

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I declare under penalty of perjury that the foregoing is true and correct.



Cindy R. MacDonald